

**United States District Court
Eastern District of Michigan
Southern Division**

United States of America,

Plaintiff,

Case No. 15-CR-20382

v.

Honorable Victoria A. Roberts

D-1 Paul Nicoletti,

Defendant.

_____ /

**Motion for Permission to File Oversized Brief in Response
to Motion to Vacate under 28 U.S.C. § 2255 [ECF No. 247]**

The United States of America respectfully moves this Court for permission to file a brief in excess of 25 pages in response to Defendant's Motion to Vacate [ECF No. 247] for the reasons set forth in the attached brief.

Respectfully submitted,

Dawn N. Ison
United States Attorney

s/Craig A. Weier (P33261)
Assistant United States Attorney
211 W. Fort St., Suite 2001
Detroit, Michigan 48226
313.226.9678

Dated: August 23, 2022

**United States District Court
Eastern District of Michigan
Southern Division**

United States of America,

Plaintiff,

Case No. 15-CR-20382

v.

Honorable Victoria A. Roberts

D-1 Paul Nicoletti,

Defendant.

/

**Brief in Support of Government's Motion for
Permission to File Oversized Brief in Response
to Motion to Vacate under 28 U.S.C. § 2255 [ECF No. 247]**

PERTINENT FACTS AND PROCEDURAL POSTURE

On June 9, 2022, Nicoletti filed a Motion to Vacate under 28 U.S.C. § 2255, claiming ineffective assistance of counsel. (ECF No. 247). The motion raises 24 separate grounds for relief, spanning 33 pages, and was filed with attachments which bring the total submission to the Court to over 250 pages. (*Id.*). On June 22, 2022, the Court ordered the government to respond and set an initial briefing schedule. (ECF No. 249). On July 13, 2022, the Court, on the government's motion, revised its briefing schedule to require a

government response by August 26, 2022. (ECF No. 251).

BASIS FOR REQUEST TO FILE OVERSIZED BRIEF

E.D. Mich. LCrR 12.1 provides that criminal motion practice is governed by E.D. Mich. LR 7.1. The pertinent provision of that rule provides that:

The text of a brief supporting a motion or response, including footnotes and signatures, may not exceed 25 pages. A person seeking to file a longer brief may apply *ex parte* in writing setting forth the reasons.

E.D. Mich. LR 7.1(d)(3).

Given the scope of Nicoletti's argument, that three different attorneys were constitutionally ineffective on 24 separate grounds, the government cannot adequately respond in a brief limited to 25 pages. Each ground requires some factual development and analysis which require a minimum of two-pages per ground, on average. Additional text is required to brief the applicable law. The government's draft brief currently contains approximately 55 pages of text (which include a brief summary of its argument preceding each ground for the Court's convenience) as well as an overview of the law applicable to 28 U.S.C. § 2255 Petitions and ineffective

assistance of counsel analysis.

CONCLUSION

For these reasons, the government respectfully requests that the Court permit its filing of an oversized brief to adequately address all of the issues raised in Nicoletti's Motion to Vacate under 28 U.S.C. § 2255 (ECF No. 247).

Respectfully submitted,

Dawn N. Ison
United States Attorney

s/Craig A. Weier (P33261)
Assistant United States Attorney
211 W. Fort St., Suite 2001
Detroit, Michigan 48226
313.226.9678

Dated: August 23, 2022

CERTIFICATE OF SERVICE

I certify that on August 23, 2022, I served the foregoing Motion for Permission to File an Oversized Brief on Paul Nicoletti by placing the same in the United States Mail addressed to: Paul Nicoletti, Inmate No. 55-819039, Morgantown Federal Correctional Institution, Inmate Mail/Parcels, P.O. Box 1000, Morgantown, West Virginia 26507.

/s/Craig A. Weier
Craig A. Weier
Assistant U.S. Attorney